

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IAN A. FINLAY,)	
)	
Petitioner,)	Civil Action No. 12-499
)	Judge Cathy Bissoon
v.)	Magistrate Judge Robert C. Mitchell
)	
MICHAEL C. POTTEIGER, <i>et al.</i> ,)	
)	
Respondents.)	

MEMORANDUM ORDER

Ian A. Finlay (“Petitioner”) is a state prisoner who brings the instant petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, attacking his 2005 conviction in the Court of Common Pleas of Westmoreland County, Pennsylvania, of six counts of attempted unlawful contact with a minor, one count of attempted involuntary deviate sexual intercourse, and one count of attempted statutory sexual assault. See 18 Pa. Cons. Stat. §§ 901(a), 6318, 3123, and 3122. The initial petition was filed on April 16, 2012. (Doc. 1). An amended petition followed on October 12, 2012. (Doc. 12). Respondents filed an answer December 17, 2012. (Docs. 17).

This matter was referred to a United States Magistrate Judge for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.C and 72.D of the Local Rules for Magistrate Judges. The magistrate judge issued a report and recommendation on January 23, 2013, recommending that this petition be dismissed, and that a certificate of appealability be denied. (Doc. 18). Petitioner timely filed objections to the report on February 6, 2013. (Doc. 19).

The subjects underlying many of Petitioner’s objections were analyzed properly by the magistrate judge in his report. However, in the interest of thoroughness, the undersigned will address one issue specifically.

The magistrate judge opined in his report that “it is not a defense that the defendant did not know the age of the child.” Given the facts of this case, that is not a correct statement of the law. 18 Pa. Cons. Stat. § 3102 prohibits such a defense only when the victim of an age-based sexual offense is 14 years or less. The “child” in this case purportedly was 15 years old.¹ Be that as it may, the magistrate judge’s misstatement has no bearing on the outcome of this case. Given the AEDPA’s strict deference to the factual and legal conclusions of the state court, see 28 U.S.C. § 2254(d), numerous bases exist to deny each of Petitioner’s claims. As such, the error was harmless.

After *de novo* review of the pleadings and documents in the case, together with the report and recommendation (Doc. 18), and Petitioner’s objections thereto (Doc. 19), the following ORDER is entered:

AND NOW, this 14th day of May, 2013,

IT IS HEREBY ORDERED that Petitioner’s petition for writ of habeas corpus is DISMISSED, with prejudice.

IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

IT IS FURTHER ORDERED that the magistrate judge’s report and recommendation (Doc. 18) is adopted as the opinion of this Court, as modified by this order.

BY THE COURT:

s/Cathy Bissoon
CATHY BISSOON
UNITED STATES DISTRICT JUDGE

¹ The “child” who was the subject of Petitioner’s advances was no child at all, but instead was a City of Greensburg, Pennsylvania, patrolman posing as a 15-year-old girl.

cc (via CM/ECF):
counsel of record